

REMARKS

By this amendment, claims 1-14 and 27 remain in this application and new claims 31-38 have been added.

In the Office Action, claims 1, 4-9, 12-14 and 27 were rejected as anticipated by U.S. Patent No. 5,419,777 (Hofling), claims 1-14 and 27 were rejected as anticipated by U.S. Patent No. 6,129,726 (Edwards) and claims 1-9, 12-14 and 27 were rejected as anticipated by U.S. Patent No. 6,425,887 (McGuckin).

At the outset, it should be pointed out that claim 1 requires the retention member retains the fluid delivery members in a first deployed position and a second deployed position. The term "deployed" was added to clarify this recitation. None of the applied references has such retention member. The Examiner does not point out how these three patents disclose such retention member. Hofling discloses a plunger 56 with a threaded engagement of a knurled nut 62. McGuckin briefly mentions in column 11 that other types of coaxial handles could be utilized such as screw-type, ratchet type or trigger-activated handles. Edwards merely has slidable tabs. The knurled knob in Edwards secures the orientation of the stylet, but does not secure it in different deployed positions. Applicants submit that these disclosures are insufficient to anticipate claim 1. The advantage of the retention member in the present application is to enable creation of different sized treatment zones to treat the lesion. By having the fluid delivery members deployed to different positions and retaining them in these positions, the surgeon can be better assured of the accuracy of fluid delivery and maintenance of the treatment zone size desired. This advantage is not recognized in any of these applied references. Claim 1 has been amended to highlight these different treatment zones.

Further, claim 1 has been amended to include that the fluid delivery members have at least two openings proximal of the distal tip. These side holes advantageously enable better distribution of the fluid than a single opening at the distal end in the cited art.

For at least the foregoing reasons, claim 1 is not anticipated by McGuckin, Edwards or Hofling and Applicants respectfully request withdrawal of the anticipation rejection.

Applicants have also submitted new dependent claims 31-34 for the Examiner's consideration further defining the retention member. These claims directly or indirectly depend from claim 31. Claim 31 recites that the actuator is slidable in an axial direction to deploy the fluid delivery members and the retention member is disposed internal of the apparatus and interacts with the slidable actuator to retain the fluid delivery members in the first and second deployed positions. No such structure is disclosed or suggested in the prior art.

Claim 32 depends from claim 31 and recites a second retention member disposed internal of the apparatus and radially spaced from the first retention member wherein the second retention member interacts with the slidable actuator to retain the fluid delivery members in the first and second deployed positions. By providing such spaced retention members, axial distortion of the actuator during sliding movement is minimized. In claim 33, the actuator includes a flexible member formed by a cutout in a body of the actuator and is engagable with the retention member. Such flexible member provides a cantilever effect and a tactile feel to the user. The flexible member, by being on the actuator and therefore internal, avoids the possibility of the breaking off. No such structure is taught or suggested in the cited art.

Consequently, dependent claims 31-34 are believed patentable over the prior art.

Claims 2-14 depend from claim 1 and are also believed patentable for at least the same reasons that claim 1 is believed patentable.

With respect to independent claim 27, none of the cited art discloses or suggests the dimensional limitations. Applicants' invention of claim 27 minimizes the size of the elongated member to reduce surgical trauma while maximizing the size of the fluid delivery members to maximize the fluid volume to treat the lesion. This is achieved by the cross-sectional circumference recitations in the claims. These recitations cannot be ignored, and are not disclosed (or suggested) in the prior art. Withdrawal of the rejection of claim 27 is respectfully requested.

The '887 McGuckin patent was combined with U.S. Patent No. 6,217,559 to Foster to reject claims 1-14 and 27 as obvious. Foster discloses a syringe having a plunger element 21 slidably disposed in medicinal reservoir 22. A locking unit 15 is disclosed comprising an outwardly projecting tab member 60 formed on an exterior surface of the male sleeve member 30 and a contoured hinged flap element 61 defining an opening 45 in the side of the female sleeve member 40 to receive tab 60. Even assuming solely for the sake of argument that these references are combined as the Examiner suggests, such combination of references does not meet the recitations of the claims. That is, Foster does not cure the deficiencies of '887 McGuckin. Foster does not enable two treatment zones for delivering fluid to treat a lesion (claim 1) nor disclose the dimensional recitations of the fluid delivery members (claim 27). Foster doesn't even have a plurality of fluid delivery members. Further, Foster doesn't disclose the internal positioning of the retention member (dependent claim 31) or a second retention member (dependent claims 32 and 34) or an internal flexible member (dependent claim 33). Consequently, the obviousness rejection of the independent and dependent claims should be withdrawn.

New independent claim 35 and dependent claims 36-38 have been added. Claim 35 recites inter alia an elongated member extending from a housing having a plurality of openings formed in a sidewall proximal of the distal tip, a plurality of hollow fluid delivery members movably positioned in the elongated member and having a penetrating tip, a lumen and at least one opening communicating with the lumen for delivering fluid to the lesion, an inner tube retaining the fluid delivery members, and a first retention member retaining the inner tube. The retention member is rotated during assembly and fixed in the rotated position.

None of the prior art teaches or suggests this rotated retention feature, which accommodates for the torquing motion of the fluid delivery members to enable smooth passage through the side openings in the elongated member. Thus, claim 35, and its dependent claims 36-38, are patentable over the prior art.

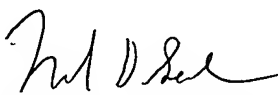
With respect to the obviousness type double patenting rejection over co-pending application serial no. 10/074468, upon withdrawal of the foregoing prior art rejections, Applicants will submit

a Terminal Disclaimer to obviate this rejection and advance this application to allowance.

Prompt and favorable reconsideration of the present application is respectfully requested. The Examiner is invited to contact the undersigned should the Examiner believe it would expedite prosecution.

Respectfully submitted,

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